

HOUSE BILL No. 1054

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-9.6.

Synopsis: Garnishment of state tax refunds. Provides that if a debt has been reduced to a judgment in Indiana and the judgment has not been satisfied, set aside, or discharged in bankruptcy, the judgment creditor may garnish a state tax refund otherwise due to the debtor. Specifies the procedures that the judgment creditor must follow in obtaining the garnishment from the department of state revenue. Allows a writ of garnishment to be electronically filed with the department of state revenue. Excludes from garnishment debt subject to a repayment plan if the repayment plan has not been breached. Exempts 50% of a joint tax refund from garnishment if there is no objection to the garnishment, and permits exclusion from garnishment the part of a tax refund attributable to a spouse of the debtor who is not obligated to pay the debt.

Effective: January 1, 2017.

**Cox, Dermody, DeLaney,
Steuerwald**

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1054

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-9.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2017]:

4 **Chapter 9.6. Garnishment of State Tax Refunds**

5 **Sec. 1.** As used in this chapter, "debt" means any amount due
6 and owing under a judgment.

7 **Sec. 2.** As used in this chapter, "debtor" means any person or
8 legal entity that owes money to another, if:

9 (1) the debt has been reduced to a judgment in Indiana; and

10 (2) the judgment:

11 (A) has not been satisfied by court order;

12 (B) has not been set aside by court order;

13 (C) has not been discharged in bankruptcy; or

14 (D) is not subject to the terms of a repayment plan with the
15 judgment creditor that has not been breached.

16 **Sec. 3.** As used in this chapter, "state tax refund" includes the
17 amount of a state tax credit that is otherwise refundable to a



1 person or legal entity.

2 Sec. 4. If a debtor owes a debt reduced to a judgment in Indiana,
3 the judgment creditor may:

4 (1) have the department garnish a state tax refund payable to
5 the debtor; and

6 (2) have the state tax refund, less any part owed to a
7 nonobligated spouse, applied against the judgment debt;
8 as provided in this chapter.

9 Sec. 5. (a) To obtain a garnishment under this chapter, a
10 judgment creditor must file a petition for garnishment with the
11 court in which the original judgment lies. A petition for
12 garnishment filed under this chapter may be filed not earlier than
13 thirty (30) days after the entry of judgment.

14 (b) A petition for garnishment under this chapter must set forth
15 the following:

16 (1) The full name of the debtor.

17 (2) The last known address of the debtor.

18 (3) The cause number of the original action on the debt.

19 (4) The full Social Security number of the defendant, in
20 compliance with the provisions of the Indiana Rules of Trial
21 Procedure and judicial administrative rules concerning the
22 filing of documents and information that are excluded from
23 public access and are confidential.

24 (5) The date on which the judgment was entered.

25 (6) The present balance of the judgment after all payments
26 have been applied.

27 (7) A notice to the debtor of the right of the debtor or the
28 debtor's spouse to object to the garnishment of the state tax
29 refund not more than twenty-one (21) days after receipt of the
30 disclosure as described in section 6 of this chapter. The notice
31 must also contain a box for the debtor and the debtor's spouse
32 to check to waive the right to a hearing and to waive the right
33 to any objections under this chapter.

34 (8) The full name, address, and telephone number of the
35 judgment creditor.

36 (9) The judgment creditor's address for service of process in
37 Indiana, if different from the judgment creditor's address in
38 subdivision (8).

39 (c) The judgment creditor shall serve a petition for garnishment
40 under this chapter on the debtor in accordance with the Indiana
41 Rules of Trial Procedure.

42 (d) Upon approval by the court, the judgment creditor shall



1 serve an order of garnishment issued under this chapter on the
2 department electronically.

3 Sec. 6. (a) Any objection to the petition for garnishment of the
4 tax refund must be filed with the court not later than twenty-one
5 (21) days after the date of service of the notice provided to the
6 judgment debtor under section 5(b)(7) of this chapter.

7 (b) If:

8 (1) the state tax refund includes an amount payable to the
9 spouse of the debtor; and

10 (2) the spouse is not obligated to pay the judgment on the
11 debt;

12 the court shall reduce the amount of the state tax refund subject to
13 garnishment on a pro rata basis. The spouse of the debtor has the
14 burden of proving the facts described in subdivisions (1) and (2)
15 and establishing the amount of the state tax refund that is not
16 subject to garnishment.

17 (c) If the court rules against the judgment debtor, the court shall
18 issue an order of garnishment. In its order of garnishment, the
19 court shall clearly indicate that the debtor requested a hearing to
20 determine whether any part of the state tax refund is attributable
21 to the spouse of the debtor. The order must determine by what
22 percentage the amount of the state tax refund subject to
23 garnishment shall be reduced, if any, as determined in subsection
24 (b). The judgment creditor may serve the order of garnishment on
25 the department. Upon receipt of the order of garnishment, the
26 department shall deposit the amount available for garnishment as
27 follows:

28 (1) If the debtor did not file a joint tax return, the department
29 shall deposit up to one hundred percent (100%) of the
30 debtor's state tax refund, subject to the terms of the
31 garnishment order, with the person described in subsection
32 (f).

33 (2) Except as provided in subsection (d), if:

34 (A) the debtor filed a joint tax return; and

35 (B) the debtor did not object to the garnishment under
36 subsection (a);

37 the department shall deposit not more than fifty percent
38 (50%) of the debtor's state tax refund, subject to the terms of
39 the garnishment order, with the person described in
40 subsection (f).

41 (3) If:

42 (A) the debtor filed a joint tax return; and



(B) the debtor objected to the garnishment under subsection (a);
the department shall, subject to the terms of the garnishment order, deposit up to one hundred percent (100%) of the debtor's state tax refund, less the amount excluded from garnishment, if any, with the person described in subsection (f).

The department shall calculate the amount subject to garnishment after deducting the amounts described in section 10 of this chapter.

(d) If an objection is not filed under subsection (a) not later than twenty-one (21) days after the date of service on the debtor, the court shall approve the petition for garnishment and issue an order of garnishment. In its order for garnishment, the court shall clearly state that the debtor did not file an objection.

(e) If debt reduced to a judgment is jointly owed by a debtor and the spouse of a debtor, the department shall deposit up to one hundred percent (100%) of the debtor's state tax refund, subject to the terms of the garnishment order, with the person described in subsection (f).

(f) The department shall deposit an amount garnished under this chapter with the:

(1) judgment creditor's attorney of record in the garnishment action, if the judgment creditor was represented by an attorney in the garnishment action; or

(2) judgment creditor or the judgment creditor's designee, if the judgment creditor is not represented by an attorney in the garnishment action.

Sec. 7. (a) If one (1) or more orders of garnishment are received by the department for the same debtor, the department shall give priority to the order of garnishment that is received first by the department.

(b) The department shall process each order of garnishment in order of the date of receipt until the state tax refund of the debtor has been applied in its entirety, subject to the terms of the order.

Sec. 8. A judgment creditor shall pay to the department a processing fee of eight dollars (\$8) that is chargeable to the debtor for each order of garnishment under this chapter that is served on the department. The judgment creditor shall pay the fee at the time the order of garnishment is served on the department.

Sec. 9. (a) The department's liability to the judgment creditor under an order of garnishment under this chapter is limited to the amount of the state tax refund due to the defendant for the period



1 the order of garnishment is in effect, less any setoff, counterclaim,
2 or other demand of the state against the defendant. The
3 department is not liable for the department's negligence in
4 carrying out its duties under this chapter.

5 (b) After the department has deposited the amount available
6 under section 6 of this chapter, the department has no further
7 liability in the matter unless:

8 (1) an order of garnishment is received by the department for
9 a subsequent year; or

10 (2) the amount deposited by the department under section 6
11 of this chapter is in question.

12 **Sec. 10.** A setoff by a claimant agency under IC 6-8.1-9.5 or of
13 a child support obligation under IC 6-8.1-9.5 has priority over a
14 garnishment order or any other action under this chapter.

